



State of Wisconsin
Jim Doyle, Governor

EXHIBIT 8

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

April 16, 2009

Kay and Wayne Craig
Grassway Organics Farm Store, LLC
N6000 Plymouth Trail
New Holstein, WI 53061

RE: Retail Food Establishment License Application

Dear Mr. and Mrs. Craig,

The department received a Retail Food Establishment License Application and applicable fees from Grassway Organics Farm Store, LLC. on April 7, 2009.

I am writing to inform you that the department is denying the license application under ch. 93.06(7), Wis. Stats. because the sale of raw milk is a violation of ch. 97.24(2)(b), Wis. Stats. and s. ATCP 75.04, Wis. Administrative Code (ATCP 75 Appendix 3-201.13).

A public area pre-licensing inspection of your store was conducted by Food Safety Supervisor Becky Williamson and Food Safety Inspector Sid Kittleson on March 31, 2009. During that inspection one of your customers was observed setting an empty gallon glass jar on the counter and paying money for raw milk.

In Wisconsin, no person may sell or distribute unpasteurized milk or fluid milk products to consumers unless the consumer has a bona fide ownership interest in or employment relationship with the farm where the milk is produced.

Because your operation requires a Retail Food Establishment license, I have enclosed a conditional license agreement for your review. The license agreement states that Grassway Organics Farm Store, LLC will cease sales and distribution of unpasteurized milk and milk products directly to consumers. Once the agreement is signed by you, the department will issue Grassway Organics Farm Store, LLC. a **conditional** Retail Food Establishment license. The conditions under the agreement are permanent and do not expire.

Please note that you are currently operating without a license in violation of Section 97.30(2)(a), Wisconsin Statutes, which states in part:

"97.30(2)(a) Requirement. Except as provided under paragraph (b), no person may operate a retail food establishment without a valid license issued by the

Grassway Organics Farm Store, LLC
April 16, 2009

*department or an agent city or county. Licenses expire on June 30 annually.
Each retail food establishment shall have a separate license."*

To eliminate the necessity for more formal enforcement action, I am asking that you immediately review, sign and return the conditional license agreement to me so that your conditional license can be issued by May 1, 2009.

You may request a hearing on this action. Your request must be made in writing and received by the department at the address indicated below within ten days after you receive this notice.

Sincerely,



Jacqueline C. Owens, R.S.
Field Services Director
Division of Food Safety & Inspection
PO Box 8911
Madison, WI 53708-8911
Tel: 608-224-9434
Fax: 608-224-4710
e-mail: jacqueline.owens@wis.gov

Wisconsin Department of Agriculture, Trade and Consumer Protection
 FOOD SAFETY DIVISION

CONDITIONAL LICENSE AGREEMENT

A Department Food Safety Inspector made an inspection of the following facility:

Legal Name: Grassway Organics Farm Store, LLC
 Trade Name:
 Business Address: N600 Plymouth Trail
 City/State/Zip: New Holstein, WI 53061
 License Type: Retail Food Establishment
 Date Inspected: March 31, 2009

As a result of this inspection, it is agreed that:

1. The Wisconsin Department of Agriculture, Trade and Consumer Protection will issue a conditional license to the respondent at the above location upon execution of a special order under s. 93.18, Wis. Stats.
2. The following terms must be met by the respondent as conditions for the continuance of this license:

Respondent will not sell or distribute unpasteurized milk and milk products.

- a. **Sale or distribution includes any distribution to any person through any agreement other than that person being a member of the partnership, cooperative or corporation organized pursuant to chs. 178, 180, 183 or 185, Wis. Stats., to hold the Respondent's milk producer license and operate the facility.**
- b. **Sale or distribution includes any distribution to any person labeled as an "employee" of the Respondent unless there is documentation of an actual employment relationship between the person and the Respondent.**

3. The terms listed in item 2 must be satisfied immediately.
4. By signing this agreement, the respondent waives the rights to issuance of a complaint and public hearing under sections 93.06(7) and 227.51 of the Wisconsin Statutes of any issue of fact or law concerning the issuance or denial of this license. The respondent admits that the Department has personal and subject matter jurisdiction in this case.
5. By signing this agreement, the respondent agrees that violation of any term or condition in the agreement is grounds for summary suspension or revocation of the license issued under this agreement. Suspension or revocation of the license is subject to the right of public hearing only for the purpose of determining whether the conditions of this agreement have been violated. In the event of suspension or revocation of the license, a hearing may be requested within 10 days after suspension or revocation.

Signed this day of , .

BY RESPONDENT (please print):	BY STATE OF WISCONSIN, FOOD SAFETY INSPECTOR DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
SIGNATURE	APPROVED BY (SUPERVISOR)
TITLE	

Peter D. Kennedy
ATTORNEY AT LAW

EXHIBIT 10

9117A Midnight Pass Road · Sarasota, Florida 34242
Telephone: 941-349-4984
Fax: 941-312-0654 · glfcstmrs@earthlink.net

Admitted to Practice in Florida

May 4, 2009

Cheryl Furstace Daniels
Assistant Legal Counsel
Department of Agriculture, Trade
& Consumer Protection
2811 Agriculture Drive
Madison, WI 53718

Re: GrassWay Organics, Milk Producer License #191666-D2

Dear Ms. Daniels,

I am writing on behalf of Kay and Wayne Craig in response to the April 16, 2009 letter sent them by Jacqueline C. Owens, Field Services Director of DATCP's Division of Food Safety and Inspection. The Craigs have reevaluated their position and believe they are not required to obtain a Retail Food Establishment permit. Furthermore, they believe that they are not illegally selling raw milk but rather that the sale of raw milk to the owners (shareholders) of Grassway Organics Farm Store, LLC falls within the exception provided by ATCP 60.235(2)(b).

RETAIL FOOD ESTABLISHMENT PERMIT

In our opinion, Grassway Organics Farm Store, LLC is not required to obtain a retail food establishment permit. Under §97.30, Wis. Stats., a "retail food establishment" is "a permanent or mobile food processing facility where food processing is conducted primarily for direct retail sale to consumers at the facility, a mobile facility from which a potentially hazardous food is sold to consumers at retail, or a permanent facility from which food is sold to consumers at retail, whether or not that facility sells potentially hazardous food or is engaged in food processing."

Wis. Stats. §97.30 does not define "consumer" but the Wisconsin Food Code [Chapter 75 (Food Establishments) ATCP Appendix Wisconsin Administrative Code] does. Under Section 1.201.10(B) of the Wisconsin Food Code,

"consumer means a PERSON who is a member of the public, takes possession of FOOD, is not functioning in the capacity of an operator of a FOOD ESTABLISHMENT or FOOD PROCESSING PLANT, and does not offer the FOOD for resale."

Owners (shareholders) are not members of the public. Secretary Nilsestuen's February 4, 2004 Order recognized the distinction between "owners" and "members of the public" when it concluded as a matter of law that

"ownership interests must be distinct from any customer relationships on the premises of the milk producer license holder. Therefore, all milk and milk

product preparation, handling, storage and distribution amongst owners must be physically separate from any food preparation, handling, storage, distribution and sales to the public on the premises.”

Part 6 of the February 4, 2004 Order states “milk and milk product preparation, handling, storage and distribution amongst owners must be physically separate from any food preparation, handling, storage, distribution and sales to the public on the premises.” This administrative order remains the law in Wisconsin.

If owners (shareholders) are the same in the eyes of the law as “members of the public”, why did the Secretary require that “milk and milk product preparation, handling, storage and distribution amongst owners” must be physically separate from any food (including milk and milk products) preparation, handling, storage, distribution and sales to the public on the premises?

If owner transactions are the same as transactions with “members of the public” (“consumers” under 1.201.10(B) of the Wisconsin Food Code) and therefore subject to the retail food establishment permit requirement of §97.30 Wis. Stats., why did the Secretary’s February 4, 2004 Order require owner transactions pertaining to milk and milk products be physically separate from any food transactions (including those involving milk and milk products) to the public?

Since food is sold only to owners in the LLC at the farm store, there should be no requirement that the distribution of raw milk and raw milk products be at a physically separate location than the sale of other foods. The LLC would not be allowed to sell food to members of the public in its store even if it wanted to do so; Calumet County zoning regulations prohibit it. As Grassway Organics Farm Store does not sell to the public, it is not a retail food establishment under Wisconsin law [Wis. Stat. 97.30]; with this being the case, the Food Code requirement that all milk and milk products being sold be pasteurized [ATCP 75, App. 3-201.13] would not apply to the Grassway Organics Farm Store.

EXEMPTION UNDER ATCP 60.235(2)(b)

ATCP 60.235(2)(b) allows for “the distribution of unpasteurized milk, produced on a dairy farm, to ... [a]n individual who has a bona fide ownership interest in the milk producer under par. (a), if the milk producer is a legal entity other than an individual or married couple.” When DATCP proposed this regulation, it stated that the regulation would clarify “current statutory prohibitions against the sale of raw milk to consumers consistent with administrative law judge decisions.”

Prior to the time the regulation took effect, the Wisconsin Department of Financial Institutions (DFI) would issue transactional exemptions under §551.23(18) of the Wisconsin Uniform Securities Law, enabling entities holding a Wisconsin milk producer license to sell shares or membership interests. Investors in the entity could then obtain non-pasteurized dairy products from it. DFI would issue an exemption only after receiving DATCP’s approval. DATCP was copied on all letters from DFI granting an

exemption. These exemptions would not be issued unless the terms and conditions for the shares and membership interests sold to investors were consistent with orders issued by DATCP pursuant to the administrative law decisions of October 30, 2002, and February 4, 2004. DATCP would not have approved them otherwise.

On January 5, 2006, DFI issued the LLC an Order of Exemption [see enclosed] "to allow the offer and sale of Secondary Membership Interests in Grassway Organics Farm Store, LLC ("LLC") to persons in Wisconsin to enable them—as membership interest holders and, therefore, owners of the LLC—to purchase non-pasteurized dairy products under the Wisconsin Milk Producer License #191666-D2 currently owned by the LLC." Also enclosed is a copy of the terms and conditions printed on the LLC Membership Certificate.

The terms and conditions of the secondary, non-voting, limited liability company membership interest in the LLC comply with the orders issued pursuant to the administrative decisions of October 30, 2002, and February 4, 2004. As such they are likewise in compliance with ATCP 60.235(2)(b).

The LLC certificate has a disclosure statement in compliance with part 1 of the 2004 Order stating, "The investment in Grassway Organics Farm Store, LLC, part holder of milk producer license # 191666-D2, is for the purpose of holding a milk producer license using milking animals to produce milk for sale or distribution in the public, human food chain." With most of the milk production under this milk producer license being sold to the Organic Valley Cooperative, part 2 of the 2004 order is complied with as well. The members also invested money in the LLC for the purpose of being able to purchase products other than raw dairy at the store; as mentioned before, county zoning regulations would have prohibited them from obtaining any food from the store otherwise. Finally, there are disclosure statements on the risks of investing in the LLC as well as the risks of consuming raw milk which put the certificate in compliance with part 5 of the 2004 Order.

There has been no order from DATCP requiring that investors in the entity holding the milk producer license share in the profits. The terms of the LLC's certificate specifically state that secondary, non-voting shareholders are not entitled to profits; this provision was added to the certificate at the request of DFI.

The LLC is recognized as a milk producer under law since it is listed on the milk producer license issued pursuant to ATCP 60.02(1). As such, it is licensed to operate the dairy farm; and as a license holder, the LLC is legally responsible for dairy farm operations. An investment in the LLC, therefore, does fall within the exemption provided by ATCP 60.235(2)(b).

The clarification by the administrative law decisions of 2002 and 2004 has benefited Wisconsin dairy farmers and consumers. Why is DATCP trying to narrow the scope of the exemption established by the administrative law decisions at a time when thousands of dairy farmers around the country are going out of business? Why is the Department trying to make it more difficult for consumers to exercise their legal right to consume raw

milk at a time when the demand for raw milk is increasing at a faster rate than ever?
Dairy farmers who would otherwise go out of business will be able to survive if they are given the opportunity to meet this demand.

There has never been a complaint about the milk sold to shareholders of Grassway Organics Farm Store, LLC. We believe that the operation of the LLC has always been in compliance with the law. We are asking that DATCP maintain the same interpretation of the exemption it held at the time the LLC was issued an Order of Exemption by DFI.

Respectfully,



Peter D. Kennedy, Esq.
Florida Bar #464457

PDK/gmw

Enclosures

1. Order of Exemption (File No. 496217-06)
2. LLC Membership Certificate (backside)

cc: Grassway Organics Farm Store, LLC
Attn: Kay & Wayne Craig
N600 Plymouth Trail
New Holstein, WI 53061



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

May 18, 2009

Attorney Peter D. Kennedy
9117A Midnight Pass Road
Sarasota, FL 34242-2990
glfestmrs@earthlink.net

Re: Wisconsin Laws Related to Raw Milk

Dear Mr. Kennedy:

This is in response to your communication dated May 4, 2009 in which, on behalf of GrassWay Organics LLC (Kay and Wayne Craig), you requested an interpretation of Wisconsin laws related to raw (unpasteurized) milk.

Sale or Distribution of Raw Milk

Section 97.42(2), Wis. Stats., plainly prohibits the sale *or distribution* of unpasteurized "raw milk" to consumers, as follows:

97.24(2) REQUIREMENTS FOR MILK AND FLUID MILK PRODUCTS: GRADE A REQUIREMENT. (a) No person may sell or distribute any milk unless that milk is produced, processed and distributed in compliance with standards established by the department by rule under this chapter.

(b) No person may sell or distribute any milk or fluid milk products which are not grade A milk or grade A milk products to consumers, or to any restaurant, institution or retailer for consumption or resale to consumers. Grade A milk and grade A milk products shall be effectively pasteurized, and shall be produced, processed and distributed in compliance with standards established by the department by rule under this chapter.

(c) No person may sell or distribute milk or fluid milk products which are labeled or otherwise represented as grade A milk or grade A milk products unless the milk and fluid milk products comply with this chapter and with standards established by the department by rule under this chapter.

Section 97.42(2)(d)2., Stats., provides a limited exemption for "incidental sales of milk directly to consumers at the dairy farm where the milk is produced."

The Department of Agriculture, Trade and Consumer Protection (DATCP) has adopted rules to interpret and implement s. 97.24, Stats. Those rules have the force and effect of law. Current rules under s. ATCP 60.235, Wis. Adm. Code (effective since February 1, 2008), provide as follows:

Agriculture generates \$51.5 billion for Wisconsin

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • 608-224-5012 • Wisconsin.gov

ATCP 60.235 *Raw milk sales prohibited; exemptions.* No person may sell or distribute unpasteurized milk or fluid milk products to consumers, or to any person for resale or redistribution in unpasteurized form to consumers. This section does not prohibit any of the following:

(2) The distribution of unpasteurized milk, produced on a dairy farm, to any of the following:

(a) The milk producer who is licensed under s. ATCP 60.02(1) to operate that dairy farm, and who, as license holder, assumes legal responsibility for dairy farm operations.

(b) An individual who has a bona fide ownership interest in the milk producer under par. (a), if the milk producer is a legal entity other than an individual or a married couple.

(c) A family member or nonpaying household guest who consumes the milk at the home of an individual operator or bona fide owner under par. (a) or (b).

(3) The sale or distribution of unpasteurized milk, produced on a dairy farm, to the employees of that dairy farm.

(4) The incidental sale of unpasteurized milk to a consumer, for delivery to the consumer at the dairy farm where the milk is produced, for consumption by the consumer, the consumer's family, or the consumer's nonpaying guests. A sale is not incidental if it is made in the regular course of business, or is preceded by any advertising, offer or solicitation made to the general public through any communications media.

These current rules are consistent with DATCP's longstanding interpretation, and implement prior contested case decisions in *In the Matter of Milk Producer License Number 8529 of Clearview Acres, LLC, Hayward, Wisconsin, and Milk Producer License Number 14958 of Midvalleyvu Farm, Arkansaw, Wisconsin, Respondents* (DATCP administrative docket nos. 01-C-62, 01-C-96, AND 02-C-07, decisions issued in 2002 and 2004).¹

We believe that the current statutes and rules are quite clear on their face. The following points should be emphasized:

- The exemption for "incidental sales" of raw milk applies only to milk that is delivered in person to the consumer at the dairy farm where the milk is produced, for consumption by the consumer, the consumer's family, or the consumer's nonpaying guests. A sale does not qualify as an exempt "incidental" sale if it is made in the regular course of business, or is preceded by any advertising, offer or solicitation made to the general public through any communications media (including the internet).

¹ I was the administrative law judge in those 2002 and 2004 cases, before I became an assistant legal counsel for DATCP in 2008.

- Licensed milk producers (dairy farm operators) may consume their own milk production without violating the statute or rules (they are not selling or “distributing” the milk, in the statutory sense, when they consume it themselves). However, that exemption may not be used to justify what is in fact an illegal sale or distribution to consumers who do not operate the dairy farm. Section ATCP 60.235(2), Wis. Adm. Code, allows distribution of raw milk for consumption by the following persons *and no others*:
 - (a) The milk producer who is licensed under s. ATCP 60.02(1) to operate the dairy farm and who, as license holder, assumes legal responsibility for dairy farm operations.
 - (b) An individual who has a *bona fide* ownership interest in the milk producer, *if* the milk producer is a legal entity other than individual or married couple.
 - (c) A family member or nonpaying household guest who consumes the milk at the home of an individual operator or bona fide owner under par. (a) or (b).

A bona fide ownership interest under par. (b) means an *actual ownership interest in the legal entity* (for example, a shareholder interest in the corporation or member interest of the LLC) that *actually operates* and is *licensed to operate* the dairy farm, where the ownership interest is acquired with an expectation of financial profit (an actual business “investment”). It does not include “cow shares”, “license shares” or other devices that are merely designed to facilitate the illegal sale or distribution of raw milk to consumers who do not have a genuine ownership interest in the licensed business entity that operates the dairy farm.
- Section ATCP 60.235(3), Wis. Adm. Code, also allows a licensed dairy farm operator to provide raw milk for household consumption by dairy farm employees. Consumers do not qualify as “employees” under this subsection unless they are employees for tax reporting and other purposes. The exemption does not authorize further distribution of raw milk from employees to consumers.
- The exemption that was granted by DFI was for a two-year period that expired on January 5, 2008. I should also point out that the exemption letters bolsters the Department’s contention that these investments were never investments to be owners in the dairy operation for producing grade A milk. In any case, s. ATCP 60.235, Wis. Adm. Code, is controlling as to a *bona fide* ownership interest that allows for consumption of the raw milk from a dairy farm operation.

Other License Requirements

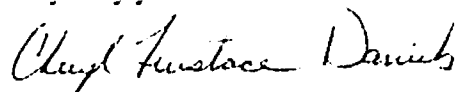
A dairy farm license under s. 97.22, Wis. Stats., does *not* authorize the license holder to operate a retail food establishment, nor does it authorize the license holder to process dairy products for sale to consumers. Under s. 97.30, Wis. Stats., and ch. ATCP 75, Wis. Adm. Code, a retail food establishment operator must hold a license from DATCP. Under s. 97.20, Wis. Stats., a person who manufactures or processes dairy products must hold a dairy plant license from DATCP. There is no incidental sales exemption for any of these requirements.

Attorney Peter D. Kennedy
May 8, 2009
Page 4 of 4

Under s. 93.06(7) and (8), Wis. Stats., DATCP may deny, suspend, revoke or impose conditions on any license for cause, including past or current noncompliance with law. Your clients must be licensed as a retail food establishment but they will not be able to be licensed until they agree to the conditions set forth in the Division's letter of April 16, 2009, which requires compliance with the law.

Please be advised that, due to the fact that your clients did not seek to appeal the denial of the license, other enforcement action for violating s. 97.30(2)(a), Stats., is warranted.

Very truly yours,



Cheryl Furstace Daniels
Assistant Legal Counsel
608-224-5026

Cc: Steven C. Ingham
Tom Leitzke
Jacqueline Owens
Jim Matson
Phil Ferris

From: pete@ftclfd.org
Sent: Monday, November 30, 2009 12:17 AM
To: Elizabeth Rich
Subject: correspondence with Daniels - June
Attachments: Ltr_fr_DATCP_062209_to_Pete.PDF

=====

Subject: GrassWay Organics
From: "Pete Kennedy, Esq." <glfcstmrs@earthlink.net>
Date: Mon, June 01, 2009 1:37 pm
To: cheryl.daniels@wi.gov
Cc: kwcraig@hughes.net

Cheryl Furstace Daniels

Assistant Legal Counsel
Department of Agriculture, Trade
& Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
tel 608-224-5026

Re: GrassWay Organics, Milk Producer License #191666-D2

Ms. Daniels,

I am in receipt of your letter dated May 8, 2009. In response to it, I have the following questions:

1. I have again looked at the administrative law decisions of October 30, 2002 and February 4, 2004. I can find nothing in either decision requiring that someone investing in an entity holding a milk producer license must have an expectation of financial profit in order to be able to obtain raw milk legally.

Order number 2 from the February 2004 decision states, "investments in entities holding milk producer licenses may not be solely for the purpose of purchasing non-pasteurized milk or milk products"--this requirement is not that there must be an expectation of financial profit but rather that the investment cannot be only for the purpose of obtaining raw milk. Order number 4 of the 2004 decision states, "the shareowner may be required to share or assume the risk of losing their investment in the entity holding the milk producer license"--again, there is no requirement that the investor have an expectation of financial profit but rather that the investment in the entity holding the milk producer license may be at risk.

These orders have the force of law and have not been superceded by ATCP 60.235. Being that this regulation is supposed to be consistent with the 2002 and 2004 administrative law decisions,

what are the specific passages in either or both of these decisions that require an expectation of financial profit for anyone investing in an entity holding a milk producer license?

2. If the distribution of milk to the LLC members was completely separate from the operation of the farm store, would DATCP issue the farm store a retail food establishment permit? In the March 20, 2007 letter to the Craigs, Jacqueline Owens, Field Services Director for DATCP's Division of Food Safety, told them, "Under administrative orders issued by the department on October 30, 2002 and February 4, 2004, owners in a valid agreement sharing ownership in a milk producer license may receive distributions of raw milk. However, raw milk distributions to owners cannot occur in a retail food store licensed by this department." Is this still DATCP's position?

Thank you in advance for answering these questions.

Respectfully,

Peter D. Kennedy, Esq.
Florida Bar #464457
9117A Midnight Pass Rd
Sarasota, FL 34242-2990
phone 941-349-4984
fax 941-312-0654
glfcstmrs@earthlink.net

PDK/gmw

cc: Wayne & Kay Craig

CONFIDENTIALITY NOTICE: This e-mail message is intended by me for use only by the individual or entity to which it is addressed. This message may contain information that is privileged or confidential. It is not intended for transmission to, or receipt by, anyone other than the named addressee (or a person authorized to receive and deliver it to the named addressee). If you have received this transmission in error, please delete it from your system without copying or forwarding it and notify Pete Kennedy of the error by reply e-mail or by calling 941-349-4984. Thank you.



State of Wisconsin
Department of Financial Institutions

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

June 16, 2009

Kay & Wayne Craig
N600 Plymouth Trail
New Hohlstein, WI 53061

Re: Effect of 2008 DATCP Rules Regarding Sales
of Unpasteurized Milk on Previously-Issued
Wisconsin Division of Securities Exemption Orders

Dear Mr. & Mrs. Craig:

The Wisconsin Division of Securities ("DOS") has previously issued an Order of Exemption under the Wisconsin Securities Law to your farming operation covering the sale of Secondary Membership Interests in Grassway Organics Farm Store, LLC, the Limited Liability Company that holds your Wisconsin milk producer license, in connection with enabling sales of unpasteurized milk to persons purchasing such Membership Interests. DOS' determination to issue such Orders of Exemption in past years was based on the language of DATCP statutes and rules in place at that time, as well as the language of DATCP administrative hearing decisions that interpreted those statutes.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) adopted new rules during 2008 which were developed by the Division of Food Safety that now deal specifically with how raw milk sales in Wisconsin can be conducted. One of the relevant new rule sections that now impacts both previously-issued Division of Securities Exemption Orders, as well as the ability of DOS to issue future Orders of Exemption, is DATCP Rule 60.235(2)(b) which permits the distribution of unpasteurized milk produced on a dairy farm to:

- (b) An individual who has a bona fide ownership interest in a milk producer under par. (a) if the milk producer is a legal entity....

This is to inform you that in view of DATCP's interpretation of its "bona fide ownership interest in the milk producer" rule above, and because a Wisconsin farming operation's status under the Wisconsin Securities Law is an issue separate from a farming operation's required compliance with Wisconsin law prohibiting the sale or distribution of raw milk except in conformance with exemptions established by rule of DATCP, the DATCP rules for incidental sales of raw milk override and supersede any authorization under the previously-issued Securities Exemption Order for your farming operation to continue to sell raw milk to existing holders of LLC Membership Interests.

Thus, the previously-issued Securities Exemption Order cannot continue to be used as a basis for selling raw milk or raw milk products to existing holders of the LLC Membership Interests in the absence of compliance with the 2008 DATCP Raw Milk rules.

Division of Securities

Mail: PO Box 1768 Madison, WI 53701-1768

Voice: (608) 266-1064

Fax: (608) 264-7979

Courier: 345 W. Washington Ave. 4th Floor Madison, WI 53703

TTY: (608) 266-8818

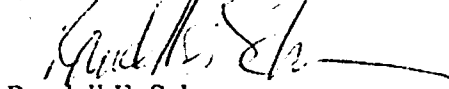
Internet: www.wdfi.org

Also, looking prospectively, the Division of Securities is precluded from issuing any future Orders of Exemption unless a farming operation structures its arrangement to meet DATCP's interpretation of its "bona fide ownership interest" rule cited above. [See the attached DATCP Interpretive Position]

Because DATCP is the state agency that created and adopted the relevant rules and has the authority to interpret such rules, before DOS would be able to issue any Order of Exemption in the future to a farming operation, the farming operation would first need to obtain a letter or other communication from DATCP stating that the farming operation's "raw milk" arrangement complies with the DATCP "bona fide ownership interest in a milk producer" rule in sec. 60.235(2), Wis. Stats. Then, after obtaining such a letter from DATCP -- and if the arrangement constitutes an investment "security" as defined in 551.102(28), Wis. Stats. -- the farming operation can contact DOS to determine whether and how Order of Exemption treatment under the Wisconsin Securities Laws (together with necessary disclosures) could be achieved.

Questions regarding the Securities Law aspects of the above can be directed to me in writing or by telephone at (608) 266-3414. The contact person at DATCP to whom questions can be directed regarding the DATCP aspects of the above is Steven C. Ingham, Administrator, Division of Food Safety, who can be reached at (608) 224-4701 [Address: 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911].

For the Division.



Randall E. Schumann
Legal Counsel for the Wisconsin DFI-Division of Securities

Attachment (1)

cc: Patricia D. Struck, Securities Division Administrator
Wisconsin Department of Agriculture, Trade and Consumer Protection

DATCP Interpretation s. 97.24, Stats. and s. ATPC 60.235, Wis. Adm. Code

Wisconsin law prohibits sale or distribution of “raw” (unpasteurized) milk to consumers. Wisconsin law also prohibits the sale or distribution of products made from raw milk, such as yogurt and butter. Only properly aged raw-milk cheeses, aged for at least 60 days, may be sold or distributed for human consumption.

Raw milk sales are governed by Wisconsin Statutes s. 97.24 and Wisconsin Administrative Code s. ATPC 60.235. Wisconsin Statutes s. 97.24(2)(b) states “[n]o person may sell or distribute any milk or fluid milk products which are not grade A milk or grade A milk products to consumers, or to any restaurant, institution or retailer for consumption or resale to consumers. Grade A milk and grade A milk products shall be effectively pasteurized...”

The law makes a very limited exception for the “incidental sale” of raw milk that is delivered in person to the consumer at the dairy farm where the milk is produced, for consumption by the consumer, the consumer’s family, or the consumer’s nonpaying guests (see s. 97.24(2)(d), Stats., and s. ATPC 60.235(4), Wisc. Adm. Code).

A sale is not an exempt “incidental” sale if it is made in the regular course of business, or is preceded by any advertising, offer or solicitation made to the general public through any communications media.

A further clarification of Wisconsin Administrative Code s. ATPC 60.235(2) states that the licensed operators of a dairy farm may obtain raw milk produced on that dairy farm for their own household consumption. This exemption for dairy farm operators is subject to some important limits. The exemption specifically allows distribution of raw milk for consumption only by the following persons (no others!):

a) The milk producer who is licensed under Wisconsin Administrative Code s. ATPC 60.02(1) to operate that dairy farm and who, as license holder, assumes legal responsibility for dairy farm operations.

b) An individual who has a bona fide ownership interest in the milk producer under a), if the milk producer is a legal entity other than individual or married couple.

c) A family member or nonpaying household guest who consumes the milk at the home of an individual operator or bona fide owner under par. a) or b).

A bona fide ownership interest under par. b) means an actual ownership interest in the legal entity (for example, a shareholder interest in the corporation or member interest of the LLC) that actually operates and is licensed to operate the dairy farm, where the ownership interest is acquired with an expectation of financial profit. It does not include “cow shares”, “license shares”, or other devices that are merely designed to facilitate the illegal sale or distribution of raw milk to consumers who do not have a real ownership interest in the licensed dairy farm operation.

Wisconsin Administrative Code s. ATPC 60.235(3) further clarifies that the licensed operator of a dairy farm may sell or distribute raw milk, produced on that dairy farm, to employees of that dairy farm for consumption by those employees. This is also a limited exemption. The employees must be actual employees whom the employer declares as employees for payroll and tax reporting purposes.



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection

Rod Nilsestuen, Secretary
Division of Food Safety Regional Office

EXHIBIT 14

June 20, 2009

191666 - D2

GRASSWAY ORGANICS FARMSTORE LLC
N600 PLYMOUTH TRAIL RD
NEW HOLSTEIN WI 53061

The inspection frequency for your dairy farm will change effective July 1, 2009. This new frequency is based on your farm inspection and milk quality history for the 12-month period from June 1, 2008 through May 31, 2009.

Your new inspection frequency is: Once every 12 months

The reason that caused the frequency change is: Good Job - No violations

Your next inspection will be conducted at the new frequency based on the date of your last routine inspection. You will be notified if your inspection frequency changes in the future.

If you need more information contact your dairy plant field representative or the Division of Food Safety office at (715) 839-3844.

PLANT # 9011
PATRON # 6104



State of Wisconsin
Jim Doyle, Governor

EXHIBIT 15

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

June 22, 2009

Attorney Peter D. Kennedy
9117A Midnight Pass Road
Sarasota, FL 34242-2990
glfcstmrs@earthlink.net

Re: Your correspondence of June 1, 2009

Dear Mr. Kennedy:

After receiving our letter of May 18, 2009 to you, on behalf of GrassWay Organics LLC (Kay and Wayne Craig), you asked a couple of additional questions concerning Wisconsin laws related to raw (unpasteurized) milk. I am responding to those questions.

You were concerned about the idea of "financial profit" being the test of *bona fide* ownership in a dairy farm operation, which you believed was not in the Department's administrative contested case decisions involving these questions. I think you mistake both the decisions' holdings and the current administrative rules, which along with the relevant statutory sections are the law. All of them speak to "incidental" sales of raw milk as exempt from the prohibition against the sale or distribution of unpasteurized milk.

Please remember that the business, which requires the milk producer license, is one where the owners are selling raw milk for the grade A market (to be pasteurized). The taking of the raw milk for personal use by an owner is merely incidental to their business of producing milk for the grade A market. Therefore, all of the owners must be in that business and must have the evidence of ownership of the business of selling milk for grade A pasteurization. This may include, but is not limited to the following. Do they have actual responsibilities and make decisions of an owner? If they are a passive owner, do they receive any type of annual statements of profit/loss and official forms for filing with their tax return?

From the information you have sent us, the observations of our department personnel and the Craig's own voluntary characterizations of the distribution of raw milk in public media, GrassWay Organics is engaging in the illegal sale or distribution of raw milk. As long as they are engaging in a prohibited business and refuse to stipulate to not engaging in those illegal activities, the Department will not issue the required retail food establishment license for its farm store.

Very truly yours,

Cheryl Furstace Daniels
Assistant Legal Counsel
608-224-5026

Cc: Steven C. Ingham, C. Thomas Leitzke, Jacqueline Owens, James Matson

Agriculture generates \$51.5 billion for Wisconsin

From: pete@ftcldf.org
Sent: Monday, November 30, 2009 12:18 AM
To: Elizabeth Rich
Subject: correspondence with Daniels - July
Attachments: Ltr_fr_DATCP_072009_re_Craigs.PDF

=====

Subject: GrassWay Organics
From: <pete@ftcldf.org>
Date: Fri, July 17, 2009 7:36 pm
To: cheryl.daniels@wi.gov

Cheryl Furstace Daniels
Assistant Legal Counsel
Department of Agriculture, Trade
& Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
tel 608-224-5026
cheryl.daniels@wi.gov

Re: GrassWay Organics, Milk Producer License #191666-D2

Ms. Daniels,

I apologize for not responding earlier to your June 22 letter. With it being the stated intent of ATCP 60.235 to be consistent with the administrative law decisions of 2002 and 2004, I still maintain that the Craigs do not have to share the profits of Grassway Organics Farm Store LLC. There is nothing in those decisions requiring a Grade A milk producer to share profits with investors.

Having said that, I can tell you that the Craigs are looking at restructuring their operation and are currently talking with their accountant about the tax ramifications of doing so. They are looking into sharing the LLC's profits with any passive owner in the entity. My question again to you is that if Grassway Organics Farm Store LLC is operating within the scope of the exemption in ATCP 60.235(2)(b), will DATCP issue the LLC a food establishment permit as long as the sale and distribution of raw milk is completely separate from the farm store.

Please let me know.

Respectfully,

Peter D. Kennedy, Esq.
Florida Bar #464457
9117A Midnight Pass Rd
Sarasota, FL 34242-2990

phone 941-349-4984
fax 941-312-0654
glfcstmrs@earthlink.net

PDK/gmw

CONFIDENTIALITY NOTICE: This e-mail message is intended by me for use only by the individual or entity to which it is addressed. This message may contain information that is privileged or confidential. It is not intended for transmission to, or receipt by, anyone other than the named addressee (or a person authorized to receive and deliver it to the named addressee). If you have received this transmission in error, please delete it from your system without copying or forwarding it and notify Pete Kennedy of the error by reply e-mail or by calling 941-349-4984. Thank you.



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

EXHIBIT 17

July 20, 2009

Attorney Peter D. Kennedy
9117A Midnight Pass Road
Sarasota, FL 34242-2990
glfcstmrs@carthlink.net

Re: July 17, 2009 e-mail

Dear Mr. Kennedy:

In the above mentioned e-mail to me, you wrote the following:

I apologize for not responding earlier to your June 22 letter. With it being the stated intent of ATCP 60.235 to be consistent with the administrative law decisions of 2002 and 2004, I still maintain that the Craigs do not have to share the profits of Grassway Organics Farm Store LLC. There is nothing in those decisions requiring a Grade A milk producer to share profits with investors.

Having said that, I can tell you that the Craigs are looking at restructuring their operation and are currently talking with their accountant about the tax ramifications of doing so. They are looking into sharing the LLC's profits with any passive owner in the entity. My question again to you is that if Grassway Organics Farm Store LLC is operating within the scope of the exemption in ATCP 60.235(2)(b), will DATCP issue the LLC a food establishment permit as long as the sale and distribution of raw milk is completely separate from the farm store.

I am going to reiterate that the profits of the farm store are not the issue. Whenever anyone is engaged in a retail food establishment business, they need a license. That said, a license may be denied under s. 93.06(7) for the following reason: "In determining whether any person is fit, qualified or equipped, the department shall consider, among other things, character and conduct, including past compliance or noncompliance with law."

As I have stated on several occasions to you, profit in the milk producing business is only one aspect of deciding if there is genuine ownership in the operation. The overall determination will be based on the fact that the owners are those who are *in the business of producing milk for grade A, either in fluid milk or milk products*, and *only incidentally* are taking milk for their own use, for themselves and family members and household guests, or allowing employees to do so under the same restrictions.

There is no legal business that includes sales or distribution of raw milk or raw milk products in Wisconsin, except for cheese aged over 60 days produced by a licensed person or entity. Nothing in the statutes, rules or administrative decisions of this agency has ever said otherwise.

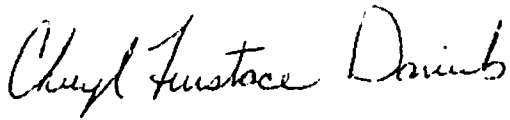
Agriculture generates \$51.5 billion for Wisconsin

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • 608-224-5012 • Wisconsin.gov

Letter to Peter D. Kennedy
July 20, 2009
Page 2

It does not matter if the Craigs separate the businesses. If they are engaged in the business of producing raw milk and/or raw milk products for sales and distribution, other than the cheese exception, to anyone besides the owners and employees, who must be in the business of producing milk for the grade A market, they are engaged in an unlawful business under Wisconsin law. They will not obtain a license by the Department to engage in a different legal business without stipulating that they will discontinue the illegal business.

Very truly yours,

A handwritten signature in cursive script that reads "Cheryl Furstace Daniels".

Cheryl Furstace Daniels
Assistant Legal Counsel
608-224-5026

Cc: Steven C. Ingham, C. Thomas Leitzke, Jacqueline Owens, James Matson